IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE MR JUSTICE K.C.BHANU

WRIT PETITION No.17498 of 2004

Between:

Ramisetty Prabhakar, S/o.R.Rajagopal,

Aged about 59 years, Flat No.202,

Subhanjali Apartments, Vijayapuri Colony,

Kothapeta, Hyderabad

…**PETITIONER**

And:

1. The Fertilisers and Chemicals Travancore Ltd.,

rep.by its Chairman & Managing Director, Corporate

Office FACT Township, Eloor, Udyogamandal-683501,

Kerala

2. The Fertilisers and Chemicals Travancore Ltd.,

rep.by its Chief Manager (Personnel)

Marketing FACT Ltd.,/Marketing Division,

Post Box No.15, Udyogamandal-683501, Kerala

3. The Fertilisers and Chemicals Travancore Ltd.,

rep.by its Deputy Chief Manager (Personnel)

Marketing FACT Ltd.,/Marketing Division,

Post Box No.15, Udyogamandal-683501, Kerala

…**RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction declaring the letter dated 13.09.2004 withholding the petitioner's terminal benefits i.e, leave encashment as arbitrary, illegal, highhanded, discriminatory and violative of the fundamental rights guaranteed to him under Articles 14 and 21 of the Constitution of India and consequently direct the respondents herein to settle the terminal benefits due to the petitioner from the respondents i.e. leave encashment and pay the same at 18% interest per annum from the date of his retirement and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR V.R.REDDY KOVVURI

Counsel for the Respondent Nos.1 to 3: MR G.RAMACHANDRA RAO

The Court made the following:

ORDER:

The present writ petition is filed for issue of appropriate writ or direction, declaring the letter dated 13.09.2004 withholding the petitioner's terminal benefits i.e., leave encashment, as arbitrary and illegal.

The petitioner, having worked in various capacities in the respondent Organisation, retired from service on 30.04.2002 on attaining superannuation. After retirement, he received some of the terminal benefits like Provident Fund etc. But the respondents did not pay other terminal benefits like gratuity, leave encashment etc. As there is no response, he made representations on 20.06.2002 and 08.07.2002 to the respondents 2 and 3, but he has not received his terminal benefits. Therefore, he is constrained to file W.P.No.17751 of 2002, wherein he filed WPMP.No.22274 of 2002 seeking a direction to the respondents to consider his representations dated 20.06.2002 and 08.07.2002, which was allowed. But he did not receive any report from the respondents. He got issued a notice to the respondents on 05.11.2002 through his counsel. He filed another writ petition No.864 of 2002, assailing the action of the respondents in issuing proceedings dated 19.11.2002. That writ petition was

allowed, wherein there was a direction to the respondents to pay gratuity amount only. Thereafter the petitioner filed Review W.P.M.P.No.9229 of 2004, which was dismissed. Thereafter, he made a representation dated 12.07.2004, requesting the respondents to pay his leave encashment amount. The respondents did not take any action on his representation. Therefore, he is constrained to file W.P.No.15861 of 2004, where under, this Court, by its order dated 03.09.2004, directed the respondents to consider and pass appropriate orders on his representation dated 12.07.2004. But surprisingly, the respondents once again refused to pay the leave encashment. Hence the present writ petition.

The respondents filed counter affidavit stating that the writ petition is not maintainable for payment of terminal benefits. It is not a statutory right to be enforced under Article 226 of the Constitution of India. It is solely based on contractual conditions of service. The claim of the terminal benefits is barred by the principles of constructive *res judicata.* W.P.No.864 of 2003 was partly allowed for payment of gratuity only. The claim of the petitioner for leave encashment was therefore deemed to have been rejected. For which a Review WPMP.No.9229 of 2004 was filed and the same was dismissed leaving it open to the petitioner to make a representation. This writ petition for the same relief is not maintainable. The claim of the terminal benefits of leave encashment is not a statutory right. After retirement from service, it came to light that the petitioner, while working at Nellore, made excess payments to a tune of Rs.15 lakhs to a transport contractor thereby causing pecuniary loss to the 1st respondent company. The loss caused to the 1st respondent has to be recovered from the petitioner. For that reason, the benefits like gratuity and leave encashment have not been paid. The loss caused to the

1st respondent company is more than the amount payable as gratuity and other terminal benefits to the petitioner. The claim of the writ petitioner with regard to the terminal benefit of leave encashment was negatived in the writ petition No.864 of 2003. In pursuance of the

directions given by this court in W.P.No.15861 of 2004, necessary orders have been passed, rejecting the claim of the petitioner. Hence, he prays to dismiss the writ petition.

The learned counsel appearing for the petitioner contended that as the issue of entitlement of leave encashment is not contested and the payment of amount towards leave encashment is not disputed by the respondents, the same cannot be withheld illegally. For the alleged loss caused to the respondent Company, no action has been initiated as on today. Therefore, withholding of terminal benefits is illegal. He prays to issue a direction to the respondents to quash the letter dated 13.09.2004 and consequential direction to the respondents to settle the terminal benefits.

On the other hand, the learned counsel appearing for the respondents contended that for the same relief, the writ petition No.864 of 2003 was filed, but this Court directed the respondents to pay gratuity amount only to the petitioner. Thereupon a review petition was filed, where under, liberty is given to the petitioner to make a representation to the respondents for the relief of leave encashment benefit, which will be considered by the respondents in accordance with law. There upon, the petitioner made a representation to the respondents on 12.07.2004. As no action has been taken by the respondents, the petitioner filed W.P.No.15861 of 2004, where under, this Court directed the 1st respondent to pass appropriate orders on the representation of the petitioner dated 12.07.2004 with regard to the benefit of leave encashment. Then the impugned proceedings have been passed, which is under challenge. There are no grounds to interfere with the impugned proceedings, and he prays to dismiss the writ petition.

The learned counsel for the petitioner relied on the following decisions reported in ***Parkash Chand vs. State of H.P. (H.P)*** wherein it was held:

> "For the foregoing reasons, in our opinion, the present writ petition deserves to be rejected on the short ground that having regard to the decision rendered in the previous writ petition, which has since become final, the

present writ petition is not maintainable and the reliefs, or some of them, claimed herein are even otherwise not capable of being granted."

P.Nagammaleswara Rao vs. APSRTC wherein it was held:

"It is well settled that where there is a decision on merits, the rule of constructive *res judicata* will be applicable to bar a second application on the same cause of action or as regards the relief which was asked for but not granted in the previous proceedings under Article 226 of the Constitution of India or as regards a ground which ought to have been taken in the previous application – according to explanation IV of Section 11 of the Code of Civil Procedure."

P.Rahman Khan vs. Asst.GM, Region-VI SBI, Zonal Office, Hyd. Wherein it was held:

"It is well known that the general principles of *res judicata* apply in a writ proceedings also."

And in ***Mysore State R.T.C. vs. Babajan (S.C)*** wherein it was held:

"Indeed, in the case now before us, the Corporation's legal position rests on a stronger footing than it did in the case cited above inasmuch as the declaratory relief asked for by the first respondent against the Corporation had not been granted. That relief would therefore, be deemed to have been refused. The first respondent did not himself go up in appeal against that decision. He cannot claim such a relief in the subsequent writ petition now before us."

No doubt W.P.No.864 of 2003 was filed by the writ petitioner for not granting the terminal benefits including gratuity and this Court specifically held therein as follows:

"The conduct of the respondents in denying gratuity benefits to the petitioner on the grounds urged by it are seen to be clearly misconceived, wholly without jurisdiction and in flagrant violation of the mandatory provisions of the Act."

So, from the above decision only, this Court directed the respondents to pay gratuity amount, for which the petitioner filed review WPMP.No.9229 of 2004, wherein this Court, by order dated

21.06.2004 held as follows:

> "The petitioner is, however, at liberty to make a representation to the Respondents for the relief of leave encashment benefit, which will be considered by the Respondents in accordance with law. If the Petitioner is aggrieved by any decision, he is at liberty to pursue appropriate remedies."

Though no relief is granted in the writ petition in respect of the leave encashment, but the learned Judge discern no error warranting review of the judgment, in the circumstances. The learned Judge directed the writ petitioner to make a representation to the respondents. Accordingly, the petitioner made a representation on 12.07.2004, but no action has been taken by the respondents. Therefore, he filed another writ petition No.15861 of 2004 for not considering his representation dated 12.07.2004, where under this Court gave a direction to the 1st respondent to pass appropriate orders on the representation of the petitioner dated 12.07.2004 with regard to leave encashment within four weeks. So, from the aforesaid mentioned facts, it cannot be said that not granting of leave encashment in the earlier round of litigation has become final. Liberty is given to the petitioner in the review petition to file an application for grant of leave encashment and the same was not considered. In pursuance of the orders dated 03.09.2004 passed by this Court in W.P.No.15861 of 2004, the impugned proceedings dated 13.09.2004 have been issued. The reason for withholding the leave encashment is that while the writ petitioner was working as SRM, Nellore, he allowed transport rebate to a transport contractor, causing pecuniary loss to the company to a tune of Rs.15 lakhs. As the excess payments to the transport contractor came to light only after his superannuation, disciplinary action could not be initiated against him. However, an action was initiated for recovery of pecuniary loss by resorting of civil proceedings. The civil proceedings initiated against him are still pending and therefore, it has not been possible to make good the pecuniary loss caused to the company. Hence the representation of the petitioner has not been considered.

The stand of the respondents from the beginning is that as the petitioner was responsible for excess payment of Rs.15 lakhs to a transport contractor, his terminal benefits have been withheld. It is also made it clear that the excess payment of Rs.15 lakhs to a transport contractor came to the knowledge of the respondents after the writ petitioner retired from service. No disciplinary action has been initiated against him. Therefore, the respondent corporation compelled to file a civil suit against the petitioner and it is still pending. Whether the petitioner caused any pecuniary loss to the company to a tune of Rs.15 lakhs is required to be decided and adjudicated by a competent civil Court of jurisdiction. The fact that the respondents initiated civil proceedings for recovery of loss caused to the respondents is not in dispute. The alleged mandatory loss caused to the company is much more than terminal benefits of the petitioner, including the gratuity and leave encashment amount. Therefore, the respondents are right in withholding the amounts for the present in view of the pendency of the civil proceedings against the writ petitioner, and the same cannot be said to be illegal or arbitrary. As the petitioner alleged to have been caused pecuniary loss to a tune of Rs.15 lakhs to the respondent company, in my considered opinion the amount towards leave encashment of the petitioner is withheld for the present. The respondents have to take up appropriate decision after result of the civil proceedings. Order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this Court. The action of the respondents cannot be said to be arbitrary nature. Hence there are no grounds to give a direction to the respondents to settle the leave encashment amount at this stage. However, after disposal of the civil suit, the respondents shall take appropriate decision with regard to the payment of leave encashment to the petitioner.

The Writ Petition is, accordingly, disposed of. No order as to costs.

Dated: 13.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Chairman & Managing Director,

The Fertilisers and Chemicals Travancore Ltd.,

Corporate Office FACT Township, Eloor,

Udyogamandal-683501, Kerala

2. The Chief Manager (Personnel)

The Fertilisers and Chemicals Travancore Ltd.,

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3. The Deputy Chief Manager (Personnel)

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